

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Requests for Waiver of Decisions of the)	
Universal Service Administrator by)	
)	
Children of Peace School)	File Nos. SLD-469413, <i>et al.</i>
Chicago, Illinois, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: May 20, 2010

Released: May 20, 2010

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant 25 appeals of decisions by the Universal Service Administrative Company (USAC) that reduce or deny funding from the schools and libraries universal service support program (also known as the E-rate program) for various funding years because USAC found that the applicants failed to timely submit FCC Forms 486.¹ As the Wireline Competition Bureau found in *Alaska Gateway School District* and *Alcona County Library*, we find that complete rejection of these applications is not warranted, given that the applicants missed a USAC procedural deadline and did not violate a Commission rule.² Therefore, we remand the underlying applications to USAC for further action consistent with this order.³ To ensure that the underlying applications are resolved expeditiously, we

¹ In this order, we use the term “appeals” to generally refer to requests for review or waiver that are related to decisions issued by USAC. Section 54.719(c) of the Commission’s rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See *Request for Review of the Decision of the Universal Service Administrator by Alaska Gateway School District, Tok, AK, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-412028, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 10182 (Wireline Comp. Bur. 2006) (*Alaska Gateway School District*) (finding good cause to waive USAC’s deadline for FCC Form 486 for several applicants); See *Requests for Waivers of the Decisions of the Universal Service Administrator by Alcona County Library, Harrisville, Michigan, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-425479, *et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15500 (Wireline Comp. Bur. 2008) (*Alcona County Library*) (finding good cause to waive USAC’s deadline for FCC Form 486 for several applicants).

³ *Id.*

direct USAC to complete its review of each application listed in the appendix and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this order.⁴

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁵ After an applicant for discounted services under the E-rate program has entered into agreements for eligible services with one or more service providers, it must file an FCC Form 471 with USAC.⁶ The FCC Form 471 notifies USAC of the services that have been ordered and supplies an estimate of funds requested for eligible services.⁷ USAC then issues a funding commitment decision letter indicating the funding, if any, the applicant is approved to receive. After the funding year begins and the applicant begins receiving services at the discounted rate, the applicant submits an FCC Form 486 to USAC. The FCC Form 486 indicates that the service has begun, specifies the service start date, and demonstrates that the applicant has received approval of its technology plans.⁸ In addition, if applicable, applicants must certify on the FCC Form 486 that they are in compliance with the Children's Internet Protection Act (CIPA).⁹ The timely submission of an FCC Form 486 ensures that disbursements for discounts on eligible services occur in a prompt and efficient manner. Because the FCC Form 486 indicates the actual service start date, USAC will only issue disbursements to the service provider for discounts on eligible services after receipt of the form.¹⁰

3. The deadline for receipt of the FCC Form 486, which is established by USAC, has varied over the years. In Funding Year 1999, applicants were required to submit the FCC Form 486 postmarked by February 15, 2001.¹¹ In Funding Year 2002 and subsequent funding years, the FCC Form 486 had to be postmarked no later than 120 days after the date service began or no later than 120 days after the date of the funding commitment decision letter, whichever was later, to receive discounts retroactively to the

⁴ In performing a complete review and analysis of each underlying application, USAC shall either grant the underlying application before it or, if denying the application, provide the applicant with all grounds for denial.

⁵ See 47 C.F.R. §§ 54.501-54.503.

⁶ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (Funding Year 2005 FCC Form 471).

⁷ 47 C.F.R. § 54.504(c).

⁸ Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (August 2003) (2003 FCC Form 486 Instructions); Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (April 2007) (2007 FCC Form 486 Instructions) (collectively, FCC Form 486 Instructions).

⁹ *Id.* at 5; see also 47 U.S.C. §§ 151 *et seq.*

¹⁰ See, e.g., 2003 and 2007 Form 486 Instructions at 2; see also *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12444, para. 4 (2002) (*CIPA II Order*); 47 C.F.R. § 54.520.

¹¹ See, e.g., Service Provider Conference Call Minutes, February 7, 2001, available at <http://www.usac.org/sl/about/call-minutes/020701min.asp> (last visited May 20, 2010); January 29, 2001 Minutes, Schools & Libraries Committee Meeting; available at <http://www.universalservice.org/about/governance/board-directors/meeting-minutes/sl-committee/2001/012901.asp> (last visited May 20, 2010).

service start date.¹² For a late FCC Form 486, the start date for discounted services is reset to 120 days before the postmark date.¹³ No funding is provided for services rendered prior to the new start date and funding commitments are reduced for the relevant funding request.¹⁴

4. Petitioners' requests for funding were denied or reduced because USAC found that the FCC Form 486 was filed late or not filed at all. Each Petitioner has requested a waiver of the deadlines or a review of USAC's decision to deny or reduce funding because of the Petitioner's late filing.

III. DISCUSSION

5. We grant the requests for review or waiver filed by 25 applicants seeking waiver of the FCC Form 486 deadline.¹⁵ Petitioners' requests for funding were denied or reduced because USAC found that the FCC Forms 486 were filed late or not filed at all.¹⁶ These Petitioners, however, either claim that the late or missed filings were the result of clerical, ministerial, or procedural errors,¹⁷ or were due to circumstances beyond their control.¹⁸

¹² *CIPA II Order*, 17 FCC Rcd at 12445, para. 5; 2003 Form 486 Instructions at 6.

¹³ *CIPA II Order*, 17 FCC Rcd at 12445, para. 5; 2003 Form 486 Instructions at 6.

¹⁴ *CIPA II Order*, 17 FCC Rcd at 12445, para. 5; 2003 Form 486 Instructions at 6.

¹⁵ See Appendix. Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ See Appendix.

¹⁷ Request for Review by Children of Peace (claiming staff changes affected filing); Request for Waiver by Colt Neck Township School District (claiming new staff and confusing rules resulted in the late filed Form 486); Request for Review by Des Moines Municipal School (claiming that superintendent, now placed on administrative leave, did not properly ensure all E-rate documents were filed on time); Request for Waiver by Hartford School System (claiming staff changes affected filing); Request for Waiver by Kokomo Center Township Consolidated School Corporation (claiming that the E-rate staffer, now retired, did not properly ensure all E-rate documents were filed on time); Request for Waiver by Krebs School District 9 (claiming consultant previously assisting the school with E-rate filings was confused about the rules); Request for Waiver by Leake and Watts Services, Inc. (claiming that the Form 486 was late due to a recent change in contact information); Request for Review by Marion Middle School (claiming that it failed to timely file the Form 486 due to confusion over program rules); Request for Waiver by Mascoma Valley Regional School District – SAU #62 (claiming that the Form 486 was filed late due to new staff having no recent experience with E-rate); Request for Review by Maureen Joy Charter School (claiming new staff and confusion resulted in the Form 486 being filed late); Request for Review by Mississippi County Library (claiming that the staffer was inexperienced); Request for Review by Palmerton Area School District (claiming staff changes affected filing); Request for Waiver by Plaquemines Parish Library (claiming it thought it filed the Form 486 electronically but later found that it was not submitted); Request for Review by Pojoaque Valley Schools (claiming significant staff changes affected filing); Request for Review by Rankin County School District (claiming staff changes affected filing); Request for Waiver by Saint Paul Public Schools (claiming it never received the Urgent Reminder letter sent by USAC); Request for Waiver by Service Associates, Inc. (Union County School
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6. In addition to waiving the FCC Form 486 deadline, we also find good cause to waive section 54.720 of the Commission's rules, which establishes deadlines for affected parties to seek review of decisions issued by USAC, for five Petitioners – Children of Peace, Guthrie Job Corps Center, Pojoaque Valley Schools, Saint Paul Public Schools, and Southeast Idaho Rural Vocational Distance Learning Network.¹⁹ Children of Peace School indicates that it was late filing its appeal because it was the end of the school year and it put off filing the appeal until school was out.²⁰ When Children of Peace School filed its appeal with USAC on June 9, 2006, it was only 12 days late.²¹ We therefore grant Children of Peace School a waiver of the filing deadline in section 54.720 of the Commission's rules.²² Similarly, because Guthrie Job Corps Center, Pojoaque Valley Schools, Saint Paul Public Schools, and Southeast Idaho Rural Vocational Distance Learning Network's appeals were only a few days late, we also grant them a waiver of the filing deadline in section 54.720 of the Commission's rules.²³

7. Based on the facts and the circumstances of these specific cases, we find that good cause exists to waive the deadline for filing the FCC Form 486 for Petitioners.²⁴ As the Bureau found in *Alaska*

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District) (claiming that, due to an unexpected change in administrative procedures at Union County School District, a series of ministerial and procedural errors occurred and caused a breakdown in the flow of FCC paperwork); Request for Waiver by Southeast Idaho Rural Vocational Distance Learning Network (claiming that confusing rules affected filing); Request for Review by St. Joseph the Carpenter School (claiming that personnel issues caused the Form 486 to be filed late); and St. Rose of Lima School (claiming that Form 486 was not filed because of administrative changes and a new E-rate staffer who was unfamiliar with E-rate).

¹⁸ Request for Waiver by Guthrie Job Corps Center (claiming that its E-rate consultant neglected to file the Form 486); Request for Waiver by Hershey Public Library (claiming staff person who handles the Form 486 was in an auto accident); Request for Review by Our Lady Queen of Peace School (claiming the principal had to leave work due to diagnosis of brain cancer and never returned to work and the assistant principal had to take over all responsibilities); Request for Waiver by Pulaski County Special School District (claiming that unexpected, intermittent, and extended illness of district personnel responsible for E-rate filings caused the late filing of the Form 486); and Request for Waiver by Steelville R-3 School District (claiming that the staff person who handles E-rate was out on a medical emergency).

¹⁹ Specifically, section 54.720 of the Commission's rules provides parties with 60 days to appeal a decision by USAC to either USAC or the Commission. 47 C.F.R. § 54.720 (2007).

²⁰ Request for Review of Children of Peace School at 1.

²¹ See Letter from USAC, Schools and Libraries, to Beth O'Connor (dated July 20, 2006) (Administrator's Decision on Appeal).

²² 47 C.F.R. § 54.720.

²³ 47 C.F.R. § 54.720. See also Letter from USAC, Schools and Libraries, to Reginald Seay, Guthrie Job Corps Center (dated October 7, 2009) (Form 486 Notification Letter); Letter from USAC, Schools and Libraries, to Ruben Cordova, Pojoaque Valley Schools (dated September 2, 2009) (Administrator's Decision on Appeal); Letter from USAC, Schools and Libraries, to Janet Yannarely, Saint Paul Public Schools (dated November 5, 2009) (Administrator's Decision on Appeal); Letter from USAC, Schools and Libraries, to Gina Hartgraves, Southeast Idaho Rural Vocational Distance Learning Network (dated January 9, 2008) (Form 486 Notification Letter).

²⁴ Because we waive the FCC Form 486 deadline, eligible applicants should receive funding from their actual service start date. We also direct USAC to waive any of its subsequent deadlines related to the late-filed FCC Form 486, such as the FCC Form 472 deadline or implementation of services deadline, if necessary for the processing of
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Gateway School District and *Alcona County Library*, we find that these violations do not constitute substantive violations of the Commission's rules, but instead are violations of USAC's procedural deadline, and therefore, a complete rejection of these applications is not warranted.²⁵ While procedural deadlines are necessary to maintain the efficient administration of the application process, as the Commission noted in *Bishop Perry*, a departure from required filing deadlines may be warranted upon careful review of the petitioner's case and when doing so will serve the public interest.²⁶ Generally, these applicants claim that staff mistakes or circumstances beyond their control resulted in missing the FCC Form 486 deadline. We note that the primary jobs of most of the people filling out these forms include school administrators, technology coordinators, and teachers, as opposed to staff dedicated to pursuing federal grants, especially in small school districts. Even when a school official becomes adept at the application process, unforeseen events or emergencies may delay filings in the event there is no other person proficient enough to complete the forms. For example, some of the late filings were caused by unforeseen events, such as a car accident. Notably, at this time, there is no evidence of waste, fraud, or abuse, misuse of funds, or a failure to adhere to core program requirements. We also note that granting these appeals should have a minimal effect on the Universal Service Fund because the monies needed to fund these requests, should they all be fully funded, have already been collected and held in reserve.²⁷ In these cases, we find the applicants have demonstrated that rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest.²⁸ We therefore grant these appeals and remand them to USAC for further processing consistent with this order.

8. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.²⁹ In addition, we emphasize the limited nature of this decision. Although we waive the deadlines for filing the FCC Form 486, we do not waive the requirement of the filing itself.³⁰ We remind USAC of its obligation to independently determine whether the disbursement of universal service funds would be consistent with program requirements, Commission

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Petitioners' applications. See *Alaska Gateway School District*, 21 FCC Rcd at 10185, n.27 and *Alcona County Library*, 23 FCC Rcd at 15504, n.27.

²⁵ *Alaska Gateway School District*, 21 FCC Rcd at 10185-86, para. 7; *Alcona County Library*, 23 FCC Rcd at 15504, para. 6.

²⁶ *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316, para. 9 (2006) (*Bishop Perry*).

²⁷ We estimate that the appeals granted in this Order involve applications for approximately \$2.4 million in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2010 (Apr. 30, 2010). Thus, we determine that the action we take today should have a minimal impact on the universal service fund as a whole.

²⁸ See 47 U.S.C. § 254(h).

²⁹ Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

³⁰ *Alaska Gateway School District*, 21 FCC Rcd at 10186, para. 8; *Alcona County Library*, 23 FCC Rcd at 15504-15505, para. 6.

rules and orders, or applicable statutes and to decline to disburse funds where this standard is not met. To ensure these issues are resolved expeditiously, we direct USAC to complete its review of each application listed in the Appendix and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this order.³¹

9. Finally, we emphasize that the Commission is committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the requests for review or waiver addressed here, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the E-rate program rules and requirements. Because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or the Commission's rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission's rules. To the extent the Commission finds that funds were not used properly, the Commission will require USAC to recover such funds through its normal processes. We emphasize that the Commission retains the discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. We remain committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), the Requests for Review and/or Waiver of 47 C.F.R. § 54.507 filed by the Petitioners as listed in the Appendix ARE GRANTED and the applications ARE REMANDED to USAC for further action consistent with the terms of this order.

11. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), waivers of section 54.720 of the Commission's rules, 47 C.F.R. § 54.720, ARE GRANTED to Children of Peace School, Guthrie Job Corps Center, Pojoaque Valley Schools, Saint Paul Public Schools, and Southeast Idaho Rural Vocational Distance Learning Network and their Form 486 ARE REMANDED to USAC for further consideration consistent with this order.

12. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to the authority delegated in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), USAC SHALL COMPLETE its review of the underlying applications as listed in the Appendix and ISSUE an award or a denial based on a complete review and analysis no later than 90 days from release of this order.

³¹ In performing a complete review and analysis of each underlying application, USAC shall either grant the underlying application before it or, if denying the application, provide the applicant with any and all grounds for denial.

13. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau

APPENDIX

Applicant	Application Number	Funding Year	Date Appeal Filed
Children of Peace School Chicago, IL	469413	2005	9/19/2006
Colt Neck Township School District Cicero, NY	582462	2007	12/16/2008
Des Moines Municipal School Des Moines, New Mexico	624408	2008	12/03/2009
Guthrie Job Corps Center (K12 Educational Consulting) Guthrie, OK	605212	2008	12/8/2009
Hartford School System Hartford, CT	469720	2005	11/15/2006
Hershey Public Library Hershey, PA	572285	2007	7/11/2008
Kokomo Center Township Consolidated School Corporation Kokomo, IN	541187	2007	5/22/2009
Krebs School District 9 Krebs, OK	628631	2008	10/05/2009
Leake and Watts Service, Inc. Dobbs Ferry, NY	522053	2006	2/06/2009
Marion Middle School Marion, Virginia	619995	2008	11/23/2009
Mascoma Valley Regional School District – SAU #62 Enfield, NH	532300	2009	4/24/2009
Maureen Joy Charter School Durham, NC	604315	2008	8/28/2009
Mississippi County Library Osceola, AR	616773	2008	1/13/2010
Our Lady Queen of Peace School Madison, WS	624404, 624457, 624510, 624531	2008	12/22/2009
Palmerton Area School District Palmerton, PA	493704	2006	4/11/2008
Plaquemines Parish Libraries Belle Chasse, LA	566635	2008	10/21/2008
Pojoaque Valley Schools Santa Fe, NM	522268	2009	11/4/2009
Pulaski County Special School District Little Rock, AR	598982	2008	6/26/2009

Rankin County School District Brandon, MS	626832	2008	12/10/2009
Saint Paul Public Schools Saint Paul, MN	637778	2008	1/06/2010
St. Joseph the Carpenter School Roselle, NJ	549282	2007	6/17/2009
St. Rose of Lima School New York, NY	342574	2003	5/05/2009
Steelville R-3 School District Roselle, NJ	549282	2007	6/17/2009
Southeast Idaho Rural Vocational Distance Learning Network Pocatello, ID	492846	2006	2/15/2008
Union County School District Union, SC	595015	2008	10/10/2009